THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 4671 of 2005

11-11-2005

Between:

1. Penmatcha Suryanarayana Raju, s/o Venkataramaraju,
r/o Peddatummidi Village, Bantumilli Mandal, Krishna District and

others.

..... PETITIONERS

AND

1 The District Collector, Krishna District, Machilipatnam.
2 Joint Collector, Krishna District.
3 Revenue Divisional Officer, Krishna District.
4 The Mandal Revenue Officer, Bantumilli Mandal, Krishna District.

.....RESPONDENTS

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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O R D E R:

The case of the petitioners is that they were assigned lands in R.S.No.791 of Pedatummidi village and were also issued pattadar passbooks by the Mandal Revenue Officer, Bantumilli (4th respondent) and have been enjoying the same from a long time and that they through rumors and from a news item in the local Telugu dailies, came to know that the land in R.S.No. 791 of Pedatummdi is

going to be resumed by the Government as it was illegally grabbed by some persons and so they under an apprehension that respondents may dispossess them by force, without holding any enquiry, sent a legal notice dated 27-01-2005 to them by registered post, making a request not to pass any order adverse to them, without giving due opportunity of being heard as they did not violate any conditions of the grant and yet respondents are trying to dispossess them by force and so respondents may be restrained from dispossessing them from the land in S.No.791 of Pedatummidi without affording an opportunity of being heard to them.

2 . In the counter affidavit filed by the 4th respondent on behalf of the respondents he alleged *inter alia* that his predecessor in office had on 15-09-1998 issued a notice of resumption to the original owners for violation of conditions 1 and 3 of D-form Patta issued to them and that those notices were served by way of affixture to a pole planted in the assigned land and a copy of the said notice was also served on the 2nd petitioner-Rudraraju Sakkubayamma wife of Krishnamraju of Pedatummidi village, and thereafter he also issued a notice in Form-I of A.P. Assigned Lands (Prohibition & Transfers) Act, 1977 (Act. 9 of 77) to the 2nd petitioner and others, and as no reply was received he passed an order of resumption of the lands and served a copy thereof on the original assignees, and thereafter on the application of the 2nd petitioner and others, he assigned the lands covered by S.Nos. 788, 798, 790, 791 and 792 of Pedatummidi village to them, without following due process of law and so departmental action was initiated against the erring officials and since petitioners are in possession of the lands in violation of the provisions of Act 9 of 77, the Collector, Krishna District (1st respondent) sent notice to the 2nd petitioner and others as to why pattas granted to them should not be cancelled as per BS No.15(18)(1), after the special Team, which enquired into the matter reported that the said land to an extent of Ac.32.41 is originally classified as 'Assessed Waste Dry' was converted into a single big fish tank, against rules and since there are no separate bunds or boundaries or survey marks showing possession of the grantees, and directed him to take possession of the said land and make necessary changes in the revenue records and thereafter the Revenue Divisional Officer, (3rd respondent) issued proceedings dated 28-02-

2005 restoring the assigned lands to original assignees as per Act 9 of 77 and since petitioners are already dispossessed they are not entitled to any relief.

3 . During the course of hearing on my direction the learned Assistant Government Pleader produced the relevant record before me and I have perused the same. It shows that when a boy by name B.Suresh aged about 10 years drowned into a big fish tank on 15-08-2004, there was an agitation and consequently an enquiry was conducted wherein some irregularities in assignment came to be noticed. In my considered opinion, those details are not necessary for the disposal of this writ petition, since the relief sought is for affording an opportunity of being heard before passing any adverse order.

4. The contention of the respondents is that petitioners are in fact not residing at Pedatummidi village and that they are all residents of the neighbouring District i.e. west Godavary District and that they managed to obtain pattas for the land by influencing the then revenue officials contrary to the rules relating to assignment, and have converted the land into a fish tank and had evaded service of notices, and failed to avail the opportunity of making a representation before the concerned authorities and hence cannot complain of lack of opportunity of being heard.

5. The file produced by the learned Assistant Government Pleader shows that there is an endorsement on the notice addressed to the petitioners that the notices were affixed to a pole near the assigned land. The order of the Collector dated 23-2-2005 shows that notices sent to the petitioners to show cause why D-form pattas granted to them cannot be cancelled were returned unserved and that the fourth and third respondents filed a caveat in this Court.

6 . The contention of the learned Assistant Government Pleader is that respondents after receiving information that petitioners were contemplating to initiate proceedings in this Court and obtain interim orders, had filed caveat in this Court and while sending the notices of the caveat to the petitioners, fourth respondent had also enclosed a show cause notice to them as to why the pattadar pass books issued to them should not be cancelled and that all those registered letters sent to Pedatummidi village were returned unserved and so it is clear that petitioners are not residing at Pedatummidi, and hence they cannot complain that no opportunity of being heard was given to them.

7. The caveat petition filed by the respondents is attached to the writ petition by registry. 4th respondent who sworn to the affidavit filed in support of the caveat signed it on 14-01-2005. It was also attested on the same day. But the Government Pleader affixed his signature thereto on 21-1-2005 and it was actually filed into Court on 28-1-2005. In para 3 of his affidavit 4th respondent as the 1st caveator stated as follows:

> "the norms of assignment procedure was not followed. The occupants were served with a notice in Form-I appended in A.P.Assigned Lands (Prohibition of Transfers), Act 1977 (Act 9 of 77) directing them as to why the occupied assigned lands to others shall not be resumed to Government. But in fact the said occupants Smt.Rudraraju Syamala, Sri Kanumuru Venkata Satyanarayana Raju and others were granted assignment of schedule lands on "D" Form Pattas."
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> In para 4 he stated "the report of the Special team reveals that the respondents herein have obtained D-Form pattas for the schedule lands by illegal means with the connivance of Revenue Officials."
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> In para 7 he stated "the petitioners have issued show cause notices to the respondents vide No. Rc.C.3378/2004 dated -01-2005 for evicting them from the above said lands. After receipt of the notices, the respondents are trying to file writ petitions against the Caveator and to got interim order. If the respondents succeed in their attempts, the purpose of assignment will be defeated and the caveators will sustain irreparable loss and hardship in their activity of distributing land to the land less poor."

8. Since notice in Form No.1 annexed to the caveat petition contains the signature of the 3rd respondent with date 19-1-2005, it is clear that the averment in para 7 of the affidavit of the 4th respondent filed in support of the caveat petition that notices were already issued to the petitioners cannot be true because by 14-1-2005, when he sworn to the affidavit, notice in Form No.1 was not even signed by the 3rd respondent. This apart in para 2 of his counter affidavit in this writ petition 4th respondent clearly alleged that all the petitioners received the notices issued by the Revenue Divisional Officer, Bandar and that in response to the said show cause notice they filed individual petitions by registered post and requested an opportunity of personal hearing.

9. When according to the allegation in para 2 of the counter affidavit of the 4th respondent in this petition, petitioners received notices sent to them by the third respondent and had sought for an opportunity of being heard, and when it is not stated as to which address the notices were sent by the 3rd respondent it has to be presumed that 3rd respondent served notices on the petitioners at Pedatummidi village only. The counter affidavit of the 4th respondent in this petition shows that both the Collector and Revenue Divisional Officer issued notices to the petitioners. Why two of his superior officers had to issue notices to the petitioners on the different dates for the same purpose of cancelling pattas is not explained by the 4th respondent in his affidavit.

10. Be that as it may, since the fact remains that the petitioners were not afforded an opportunity of being heard, in spite of their specific request order of cancellation of pattas of the petitioners passed by the Collector-(1st respondent) is set aside and the case is remitted to the Collector, (1st respondent) for fresh disposal according to law. Petitioners if they had not submitted their explanation to the show cause notices earlier are at liberty to submit their explanations to the Collector on or before 15-12-2005. First respondent shall consider the said explanations and dispose of the matter in accordance with law after affording an opportunity of being heard the petitioners, as expeditiously as possible. Till then, Statu-quo obtaining as on today shall be continued till the disposal of the case by the first respondent.

Accordingly, the writ petition is allowed. No costs.

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11-11-2005

Mjl/*